MOHAMMED AKBAR BABA

v.

NEW STRAITS TIMES PRESS

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL WAHAB PATAIL J
[CIVIL NO: S6-23-66-2000]
8 AUGUST 2006

TORT: *Defamation - Publication of letter in newspaper - Whether complaints and insinuations contained therein refer to plaintiff - Whether expressly directed at plaintiff - Whether a reasonable reader would believe and understand letter to be defamatory of plaintiff*

The subject matter of this writ of summons was a letter to the editor published by the defendant on 20 November 1998 under the title 'Where have the money from the sponsors gone?' The defences were (i) the letter was not defamatory of plaintiff in the manner asserted in the statement of claim; (ii) the letter only contained fair comment on matters of public interest because of public funds put into the Lawn Tennis Association of Malaysia (LTAM) and (iii) the letter was published upon an occasion of qualified privilege. The background herein was that the Sports Commissioner had filed a report on the management of LTAM. Various questions were asked and there were reports in newspapers. In that atmosphere of publicity, the said letter was published. From the outset the letter was written in criticism of 'an unwarranted attack' on Dato Zainal Ali, a much respected member of the LTAM. The letter proceeded to say: 'The Sports Minister has visited the National Tennis Centre many times and he should surely have been aware that things were not going smoothly'. This was a mild dig at the Sports Minister, since even Tun Ghafar Baba, having been elected president, had washed his hands off by subsequently denying he was president. Then came the reference to the plaintiff: 'LTAM Vice President Akbar Baba did not know about it', 'Akbar is the man who deals with all financial matters' and 'Many officials, office staff and coaches have left LTAM because of non-payment.' The issue that arose was whether a reasonable reader not knowing of the details in the LTAM or knowledge of the plaintiff, believed it and understood the letter as published to be defamatory of the plaintiff.

Held (dismissing plaintiff's claim):

(1) The words in the letter in its plain and ordinary meaning was not well written and because of its lack of clarity and substance ought not to have been published. But that was far from saying that the letter was defamatory of and that the complaints and insinuations refer to the plaintiff since a reasonable reader could only conclude that the plaintiff was only vice president and in charge of all financial matters in 1997-1998. In such circumstances, the insinuation if any, is that the plaintiff, and even the sports minister, did not know something that Tun Ghafar Baba did. The series of contemporaneous publications by the defendant were pointedly upon the LTAM. It hardly pointed a finger upon the plaintiff personally as to found this action by him. (paras 19, 20 & 22)

(2) Publication in a newspaper is to the general public. The approach is not to read an article from a negative or positive point of view, but according to what an objective and reasonable reading of it would convey. The said letter was not expressly directed at the plaintiff and the interpretation of the letter as written was not clearly defamatory of the plaintiff. It was ambiguous. The general public was not privy to the matters within LTAM or the knowledge of the plaintiff, such as what the role of the plaintiff had been at times other than that which was stated in the letter, as would make the letter to be reasonably read as defamatory of the plaintiff. The conclusion that a reasonable reader would believe and understand the letter to be defamatory of the plaintiff could not be drawn. (para 21)

For the plaintiff - Aisha Jothilingam (Manian Raju with her); M/s Gunaretnam & Co

For the defendant - MK Yee (assisted by Mohd Izral Khairi); M/s Shearn Delamore & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Abdul Wahab Patail J:

[1] The subject matter of this writ of summons is a letter to the editor, published by the defendant on 20 November 1998 under the title "Where have the money from sponsors gone?"

[2] This action was filed on 2 November 2000. The defence was filed on 17 January 2001. No reply was filed by the plaintiff to allege malice as a reply to the defence of justification or qualified privilege. Pleadings were closed on 31 January 2001. The defence of justification was abandoned by defendant on the trial date, 4 March 2004.

[3] The remaining defences were:

(i) The letter was not defamatory of plaintiff in the manner asserted in the statement of claim;

(ii) The letter only contained fair comment on matters of public interest because of public funds put into the Lawn Tennis Association of Malaysia (LTAM).

(iii) The letter was published upon an occasion of qualified privilege.

[4] The background included the fact the Sports Commissioner had filed a report on the management of LTAM. Various questions were asked and there were reports in newspapers:

1. Sports Letter entitled "LTAM, you are serving up nothing: but double faults" dated 27 October 1998;
2. News report entitled "Muhyddin cracks the whip Minister wields Act to check rot in LTAM" dated 29 October 1998;
3. News report entitled "Tread carefully ... Your handling of Tennis will come under scrutiny" dated 30 October 1998;
4. News report entitled "LTAM will have to tell all, says Muhyddin dated 30 October 1998;
5. News report entitled "Step down, Soon tells LTAM officials" dated 31 October 1998;
6. 2nd Sports letter entitled "Zainal guilty as well, say LTAM" dated 6 November 1998;
7. News report entitled "LTAM hounded for repayments" dated 12 November 1998;
8. News report entitled "So who's in charge? Sports Minister puzzled over LTAM leadership and athletes' behaviour" dated 12 November 1998;
9. News report entitled "No-action LTAM set Nov 30 deadline" dated 19 November 1998;

[5] In that atmosphere of publicity, the 3rd Sports letter entitled "Where have the money from sponsors gone?" dated 20 November 1998 to the editor was published.

[6] The plaintiff filed a notice for pre-trial case management on 24 December 2001. Case management to prepare for trial began. On 18 August 2003, in compliance with directions, parties filed bundles of documents and exchanged preliminary submissions of the parties.

[7] On 10 September 2003 the plaintiff's solicitors sought leave of court to file a reply out of time to add the issue of malice. Leave was granted 6 October 2003, subject to defendant being granted liberty to submit upon the late raising of the issue of malice as an afterthought. At the trial, no evidence of malice on the part of the defendant was advanced, except in the testimony of Saeed Alzalirad (PW3).

Can The Letter Be Read As Criticism Of The Plaintiff

[8] The letter published under "Sports Letter" in the New Straits Times of 20 November 1998 under the caption "Where have the money from the sponsors gone?" spoke of:

1. For the eight years where LTAM had not kept accounts, players, coaches and officials were either not paid on time or not paid at all.
2. On numerous occasions, Dato' Zainal Ali had to pay out of his own pocket for water and electricity for supply to be reconnected.
3. Sponsors such as Salem, Nissan, Carlsberg, Adidas, etc have paid a lot of money for eight years.
4. Although tax deductions were made from staff salaries, the tax office had no record of the money being paid to them.
5. The Sports Minister has visited the National Tennis Centre many times and he should surely have been aware that things were not going smoothly in LTAM.
6. Even Tun Ghafar Baba had washed his hands off LTAM.
7. But LTAM, especially vice-president Akbar Baba, do not know about it.

8. Akbar is the man who deals with all financial matters.

9. Many officials, office staff and coaches have left LTAM because of non-payment.

10. LTAM say they do not have the money for a systematic development programme.

[9] It is clear from the outset that the letter was written in criticism of "an unwarranted attack" on Dato' Zainal Ali, a much respected member of the Lawn Tennis Association of Malaysia from 1991-1997. Having mentioned a litany of problems and questions, the letter proceeded to say: "The Sports Minister has visited the National Tennis Centre many times and he should surely have been aware that things were not going smoothly in LTAM." If anything, this is a mild dig at the Sports Minister, since even Tun Ghafar Baba, having been elected president, had washed his hands off by subsequently denying he is president.

[10] Then only came the reference to the plaintiff:

1. But LTAM, especially vice-president Akbar Baba, do not know about it;

2. Akbar is the man who deals with all financial matters; and

3. Many officials, office staff and coaches have left LTAM because of non-payment.

[11] What is it that especially the plaintiff, according to the letter, did not know about?

[12] It could be either he did not know Tun Ghafar Baba had washed his hands off LTAM or as the man who now, having been elected vice-president, is the person who deals with all financial matters, did not know of the problems of LTAM. Of these two alternatives, the only reasonable reading of the letter is that LTAM and especially the plaintiff who was elected vice president, did not know Tun Ghafar Baba had washed his hands off LTAM. If LTAM and the vice president did not know, a reader would only conclude Tun Ghafar Baba did not tell them about washing his hands off LTAM. That is hardly a criticism of LTAM or for the purposes of this case, of the plaintiff.

A **Is The Letter Defamatory**

[13] The letter did not say for how long the plaintiff had been the vice-president or had been dealing with all financial matters. The letter can, therefore, only reasonably be interpreted as saying
B that the plaintiff was elected as vice-president for 1999-2000, did not yet know of the problems of LTAM. If so, then as the person in charge of financial matters, he would surely come to know of the financial problems of his charge.

C **[14]** There is otherwise nothing in the letter that on its own, that could reasonably be understood by a reasonable reader, to go so far as to say that the plaintiff was so incompetent that he did not know of the financial problems of LTAM. Mentioned immediately after the statement that even Tun Ghafar Baba had washed his
D hands off LTAM, a reader can only conclude that LTAM and especially the plaintiff as vice-president, did not yet know Tun Ghafar Baba had washed his hands off LTAM. The implication is that once he finds out what the Sports Minister should have known and Tun Ghafar Baba knew, one might expect the plaintiff
E to wash his hands off LTAM also.

What Is The Defamation If Any

[15] The letter did not state how much money was spent but the implication is that it was over eight years. The letter spoke of
F sponsors paying a lot of money to LTAM but that comment was in reference to 1993 when Malaysia had 18 senior and junior events, second only to Japan.

[16] The letter pointed to a million dollar per annum pledge by
G Telekom under the Rakan Sukan programme which was never paid. The letter also said that while LTAM often said they did not have the money for development, LTAM had been receiving sponsorships from companies such as Salem, Nissan, Carlsberg, Adidas, etc. for eight years.

H **[17]** The letter did not say what is the expenditure of the LTAM each year. All it is saying, therefore, is that LTAM is perennially short of money. The letter also says LTAM as an association are *(sic)* saying they do not have the money for a systematic development programme, which despite having the climate and
I facilities, has prevented Malaysia from becoming a tennis playing nation like Sweden or Germany.

[18] Indeed, there is little to be read as critical of LTAM or the plaintiff. A

Conclusion

[19] It can only be said, giving the words in the letter its plain and ordinary meaning, that the letter was not well written, and because of its lack of clarity and substance ought not to have been published. But, that is far from saying that the letter is defamatory of and that the complaints and insinuations refer to the plaintiff since a reasonable reader could only conclude that the plaintiff is only vice-president and in charge of all financial matters in 1997-98. In such circumstances the insinuation, if any, is that the plaintiff, and even, after all the Sports Minister, did not know something that Tun Ghafar Baba did. B C

[20] The series of contamporaneous publications by the defendant were pointedly upon the LTAM: "LTAM you are serving up nothing but double faults", "Muhyiddin cracks the whip: Minister wields Act to check rot in LTAM", "Tread carefully: Your handling of tennis will come under scrutiny", "LTAM will have to tell all, says Muhyiddin", "Step down, Soon tells LTAM officials", Zainal guilty as well, say LTAM", "LTAM hounded for repayments", "So who's in charge?" and "LTAM get Nov. 30 deadline" hardly points the finger upon the plaintiff personally as to found this action by him. D E F

[21] It must always be borne in mind that the publication in a newspaper is to the general public. The approach is not to read an article from a negative or positive point of view, but according to what an objective and reasonable reading of it would convey. The letter is not expressly directed at the plaintiff, and the interpretation of the letter as written is not clearly defamatory of the plaintiff. It is ambiguous. The general public is not privy to the matters within LTAM or the knowledge of the plaintiff, such as what the role of the plaintiff had been at times other than that which is stated in the letter, as would make the letter to be reasonably read as defamatory of the plaintiff. The issue then is whether a reasonable reader not knowing of the details in the LTAM or knowledge of the plaintiff, believing it, understand the letter as published, to be defamatory of the plaintiff. For all of the reasons above, that conclusion cannot be drawn. G H I

[22] The plaintiff's claim was, therefore, dismissed with costs.